

Provost & Colrick, P.A.  
Counselors At Law  
50 Thoreau Drive  
Freehold, NJ 07728  
(732) 462-6262  
(732) 462-6538 fax  
Attorneys for Plaintiff

Nicholas Cosmas

Plaintiff(s)

vs.

American Express Centurion Bank

Defendant(s)

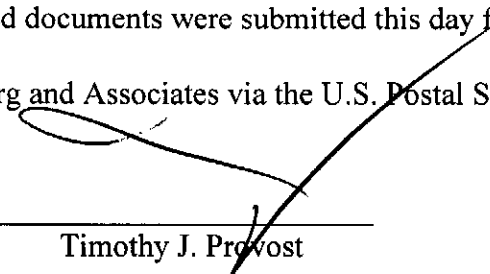
United States District Court  
District of New Jersey

DOCKET NO.: 07-CV-6099 (FLW)

CIVIL ACTION

AFFIDAVIT OF SERVICE

I hereby certify that the annexed documents were submitted this day for electronic filing  
and a copy was sent to Goldberg and Associates via the U.S. Postal Service.

  
\_\_\_\_\_  
Timothy J. Provost

Provost & Colrick, P.A.  
Counselors At Law  
50 Thoreau Drive  
Freehold, NJ 07728  
(732) 462-6262  
(732) 462-6538 fax  
Attorneys for Plaintiff

Nicholas Cosmas	United States District Court
	District of New Jersey
Plaintiff(s)	
vs.	DOCKET NO.: 07-CV-6099 (FLW)
American Express Centurion Bank	CIVIL ACTION
Defendant(s)	NOTICE OF CROSS MOTION FOR PARTIAL SUMMARY JUDGMENT

TO: Goldberg & Associates  
75 Main Street  
Suite 201  
Millburn, NJ 07041  
(201) 420-1771  
Attorneys for Defendant

PLEASE TAKE NOTICE that on December 21, 2009, at 9 a.m. in the forenoon or as soon thereafter as counsel may be heard, the undersigned attorney for Plaintiffs, Nicholas Cosmas, shall apply to the Hon. Lois H. Goodman, at the United States District Court for the District of New Jersey, located at Clarkson S. Fisher U.S. Courthouse, 402 East State Street, Room 7050, Trenton, New Jersey, 08608, for an Order for Partial Summary Judgment on the issue of liability.

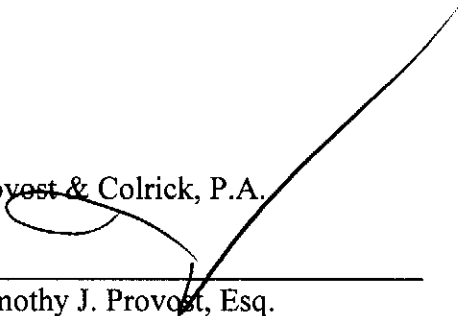
PLEASE TAKE FURTHER NOTICE that a proposed form of Order is attached.

PLEASE TAKE FURTHER NOTICE that oral argument is hereby requested.

PLEASE TAKE FURTHER NOTICE that in support of the within Notice of Motion the plaintiffs, shall rely on the attached certification, brief and supporting documents.

Dated: \_\_\_\_\_

Provost & Colrick, P.A.

  
\_\_\_\_\_  
Timothy J. Provost, Esq.

Provost & Colrick, P.A.  
Counselors At Law  
50 Thoreau Drive  
Freehold, NJ 07728  
(732) 462-6262  
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Attorneys for Plaintiff

Nicholas Cosmas	United States District Court
	District of New Jersey
Plaintiff(s)	
vs.	DOCKET NO.:07-CV-6099 (FLW)
American Express Centurion Bank	CIVIL ACTION
Defendant(s)	ORDER

This matter having been opened to the Court by Provost & Colrick, LLC., attorneys for the Plaintiff on a Motion for partial summary judgment on the issue of liability and the Court having considered the moving papers and oral argument if any and for good cause shown,

IT IS on this \_\_\_\_\_ day of \_\_\_\_\_, 2009, ORDERED that defendants motion for dismissal of plaintiff's complaint is denied.

FURTHER ORDERED the partial summary judgment on the issue of liability is granted in favor of plaintiff and against defendant.

\_\_\_\_\_  
Hon. Lois H. Goodman

Provost & Colrick  
50 Thoreau Drive  
Freehold, NJ 07728  
732-462-6262  
732-462-6538 fax  
MPC6538@aol.com

December 8, 2009

United States District Court  
Clarkson S. Fisher U.S. Courthouse  
402 East State Street  
Room 7050  
Trenton, NJ 08608

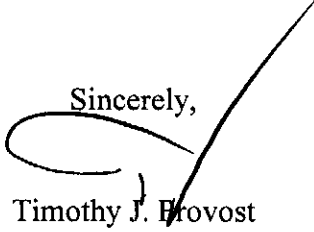
RE: Cosmas vs. American Express  
Docket No. 07-CV-6099 (FLW)  
Return Date December 21, 2009

Dear Sir:

Enclosed please find the Original and 2 copies of plaintiffs Opposition to defendant's Motion to Dismiss, plaintiffs Motion for Summary Judgment on the issue of liability, supporting letter brief, list of documents certification, Notice of Motion and Proposed Order. Please file the enclosed and return a copy of the motion marked filed in the enclosed postage paid envelope.

Under cover of a copy of this letter defendants attorney is being served with this motion.

Sincerely,



Timothy J. Provost

cc: Jack Gross  
Goldberg & Associates  
75 Main Street  
Milburn, NJ 07041

Provost & Colrick  
50 Thoreau Drive  
Freehold, NJ 07728  
732-462-6262  
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MPC6538@aol.com

December 8, 2009

Hon. Goodman  
United States District Court  
Clarkson S. Fisher U.S. Courthouse  
402 East State Street  
Room 7050  
Trenton, NJ 08608

RE: Cosmas vs. American Express  
Docket No. 07-CV-6099 (FLW)  
Return Date December 21, 2009

Dear Judge Goodman,

Please accept the enclosed letter brief and supporting documents in lieu of a more formal brief in opposition to defendants Motion to Dismiss plaintiffs complaint. And in support of plaintiffs Motion for Partial Summary Judgment.

#### STATEMENT OF FACTS

From the mid 1990's through 2003, plaintiff Nicholas Cosmas utilized two Credit cards issued by Defendant American Express. One credit card was a personal card and the other was a corporate card provided by his former corporate employer.

During the many years plaintiff utilized his personal card plaintiff accumulated "rewards points" from American Express totaling over 600,000.00 points. Exhibit 1. The fair market value of points established by defendant American Express for purchase is of reward points is \$25.00 per 1000 points or \$15,000.00 600,000 points. Exhibit II

Deposition Nicholas Cosmas page 104 line 23-25 and page 105 lines 1-5.

On or about April 30, 2004 plaintiff entered into a settlement with defendant pertaining to his personal account paying the defendant \$25,000.00 on his personal card. Exhibit III.

At the time of plaintiff's satisfying his personal card with defendant, defendant was owed approximately \$43,000.00 by plaintiff's former employer on the corporate card. With the employer out of business, defendant began a campaign of attempting to collect the debt from plaintiff.

Plaintiff recounts that defendant began sending him letters and calling his home on a non-stop basis. Exhibit IV deposition of Nicholas Cosmas Page 37 Line 11-15. Thereafter, as a result of plaintiff not paying the corporate debt owed by plaintiff's employer to defendant, defendant cancelled plaintiff's reward points. When plaintiff demanded reinstatement, defendant responded:

Unfortunately, we are unable to reinstate your Membership Rewards points at this time.

Our records indicate that your Corporate Card account number 3783-479639-41009

Has been cancelled. Please contact our Credit Department to discuss the matter Further. Exhibit V American Express Letter June 7, 2004.

Plaintiff again insisted to defendant that he was not responsible for the Corporate Card debt and that his Reward Points should be reinstated. On August 17, 2004 defendant again wrote to plaintiff advising that plaintiff was responsible for the business account and as a result of the corporations' s default his points were cancelled. Exhibit

VI

Plaintiff always represented to defendant that he did not owe and was not responsible for the corporate debt. Defendants "redacted" tapes of conversations between Cosmas and defendant's representatives confirms that in June 4, 2004 defendant disputed the debt. The dispute is in defendants records. Exhibit VII Redact p.1 During this time defendant began reporting to the credit reporting agencies that plaintiff owed the debt and that the responsibility for the account was the "individual account holder" and that the account was closed by American Express with a past due balance of \$42,329.00. Exhibit VIII

Plaintiff's expert has stated that as a result of defendant's improper credit reporting plaintiff has been damaged \$5,189.00. Exhibit. VIII Over the next year defendant continued call and write plaintiff demanding payment on the corporate account, reporting his credit delinquent and keeping his rewards points. Plaintiff continued to maintain his "innocence." Defendant brought suit in the Law Division of the Mercer County Superior Court Docket No. Mer-L-2410-05 to collect the corporate debt from the plaintiff. Plaintiff denied personal responsibility. Redacted notes from defendants file show that Mediation was ordered by the Court. The mediator requested proof of then defendant Cosmas personal guarantee from American Express. None was provided. Exhibit 6 (page 30) Defendant's notes further show that the mediator advised that American Express was not acting in good faith and cancelled the mediation. Exhibit X Redacted notes page 31 - 32

The matter went to trial and on August 10, 2006 the complaint against the now plaintiff was dismissed. Exhibit XI



Plaintiff immediately contracted defendant and on August 15, 2006 sent a letter to defendant outlining his problems starting with his credit rating and the effect the improper reporting has had on other credit lines and his reward points. Exhibit XII.

On August 29, 2006 plaintiff wrote to Equifax showing the dismissal of defendant's case against him and to correct his credit rating. Exhibit XIII. Thereafter, Equifax responded that they had contacted American Express and that American Express advised that the balance due from plaintiff was being correctly reported. Exhibit XIII. The Court's ruling against American Express had provided plaintiff with no relief: His credit was still being slandered; he was being charged higher interest rates on credit cards; and he was still deprived of his reward points. He was receiving as many harassing and threatening phone calls and letters as before he was vindicated in Court.

On July 29, 2009 Edmond Garabedian from defendant American Express was deposed. He is a thirty five year employee of American Express with a paralegal certification concentrating in civil litigation and testifies for American Express about once per week in Court. The witness testified that plaintiff's account would have been "...reported derogatory in November 2003" page 10 line 22-23 and "The credit report was not deleted until the end of 2007 or January 2008." page 18 line 4-6. Exhibit XV deposition

When asked Q. And then we had litigation in which the court said that Mr. Cosmas is not responsible from the paperwork you see in front of you; is that correct?

A. There was a judgment entered in favor of Mr. Cosmas, yes.

Q. And thereafter should American Express have notified the credit

reporting agencies and said clean up his credit, he doesn't owe the \$43,000? Should that have happened?

A. Yes.

Exhibit XVI deposition page 15 lines 13-24

Despite the ruling of the Superior Court, plaintiffs situation remained un-changed from August 10, 2006 until January 2008 when plaintiff initiated the within litigation. Plaintiff wrote to defendant, called defendant, wrote and called the credit reporting agencies, spoke to collectors, etc., all to no avail.

Plaintiff filed the within action in the Mercer County Superior Court on 11-30-2007 and served same upon defendant in early December 2007. Defendant transferred the matter to this Court thereafter. Plaintiff suffered for over four (4) years of defendants malicious reprisal for plaintiff disputing a debt that he did not owe. Defendant knew defendant disputed the debt in 2003 but reported it anyway and attempted to collect it from the plaintiff. Defendant sued plaintiff and the mediator found defendant to be acting in bad faith. The defendant lost in Court and was contacted by there attorneys, by the plaintiff verbally and in writing and by Equifax and defendant still refused to cease its collection actions against the plaintiff. This matter was not resolved until litigation was initiated due entirely to defendant's willful and malicious conducts.

### **Legal Argument**

Plaintiff sues defendant, a furnisher of information, under the Fair Credit Reporting Act (FCRA) 15 U.S.C. § 1681 et seq. and at common law.

Much of the FCRA is directed specifically to the credit reporting agencies. The Act states, "inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence which is essential to the continued functioning of the banking system." 15 U.S.C. § 1681 (a) (1). See Gordon v. Greenpoint Credit, 266 F. Supp. 2d 1007 (2003).

As indicated in Gordon, inaccuracies not only come from credit reporting agencies, but also from institutions that furnish information to the reporters.

The Gordon court reviewed the liability of furnishers of information under the provisions of the FCRA as follows:

The FCRA imposes civil liability on any person who willfully or negligently fails to comply with any of the Act's requirements with respect to any consumer, 15 U.S.C. § 1681n (willful noncompliance), § 1681o (negligent noncompliance). As it relates to furnishers of information to consumer reporting agencies, the FCRA sets forth two general requirements: the duty to provide accurate information (15 U.S.C. § 1681s-2(a)); and the duty to investigate the accuracy of reported information upon receiving notice of a dispute (§ 1681s-2(b)). Without more, the terms of §§ 1681n and 1681o would allow a consumer to recover from a furnisher of information for any willful or negligent failure to meet these duties. The FCRA however expressly excludes § 1681s-2(a) from the purview of §§ 1681 n and 1681o, instead leaving enforcement of § 1681s-2(a) to the Federal and State agencies and officials identified in § 1681s. 15 U.S.C. §§ 1681s-2(c), 1681s-2(d). This express limitation on liability makes no mention of § 1681s-2(b). As the FCRA imparts civil liability to any person who willfully or negligently fails to

comply with any of the Act's requirements, and Congress has not expressly excluded § 1681s-2(b) or furnishers of information from this potential liability, the Court holds that a consumer can maintain a private cause of action against a furnisher of information for willful or negligent noncompliance with § 1681s-2(b).

Gordon, Supra., at 1009

According to the holding of the Court, the FCRA affords plaintiff Cosmas a private cause of action against a furnisher of information pursuant to 1681s-2(b).

State Claims:

The Gordon Court held that the FCRA does not preempt state common law claims in the nature of defamation, invasion of privacy or negligence. The Statute § 1681h(e) provides in relevant part as follows:

No consumer may bring any action or proceeding in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against ... any person who furnishes information to a consumer reporting agency ... except as to false information furnished with malice or willful intent to injure such consumer.

15 U.S.C. § 1681 h(e).

Plaintiff Cosmas complaint states common law claims against defendant for negligently reporting inaccurate information and failure to investigate and correct inaccuracies. His common law claims are authorized by § 1681 h(e) so long as he shows that the false information was furnished with malice or willful intent to injure the consumer.

Malice and willful intent:

Although the FCRA does not define malice or willful intent the Eighth Circuit has equated the malice and willful intent standard to the New York Times v. Sullivan standard that a statement be made with, “knowledge that it was false or with reckless disregard of whether it was false or not.” (citations omitted.)

Gordon, Supra, at 1012

Punitive Damages:

In Evantash V.G.E. Capital 2003 U.S. Dist. LEXIS 23131 the Court, held that a credit reporting agency acted with conscious or reckless disregard to plaintiff’s rights where the reporting agency continued to report the account on plaintiff’s credit report as, “INCLUDED IN BANKRUPTCY” although the furnisher of information notified the reporting agency that their reporting was wrong.

Punitive damages may be warranted where the evidence shows the inaccuracies in credit reports arise from something more than an isolated instance of human error, which is promptly cured Evantash, Supra, at 26.

American Express acted in willful disregard of a court order clearing Cosmas’ account and in willful disregard of notification of inaccuracies by Mr. Cosmas. In spite, of the court order and notifications, the defendant, American Express, persisted in erroneously reporting plaintiff’s credit information.

It was only after plaintiff brought this lawsuit that American Express stopped their willful disregard of plaintiff’s rights pursuant to the FCRA.

Damages and Attorney Fees:

15 U.S.C.§ 616 Civil liability for willful non compliance and §617 Civil liability

for negligent non compliance both provide for mandatory attorney fees in addition to damages as follows:

§ 616. Civil liability for willful noncompliance [15 U.S.C. §1681n]

- (a) In general. Any person who willfully fails to comply with any requirement imposed under this title with respect to any consumer is liable to that consumer in an amount equal to the sum of
- (1) (A) any actual damages sustained by the consumer as a result of the failure or damages of not less than \$100 and not more than \$1,000; or
  - (2) Such amount of punitive damages as the court may allow; and
  - (3) In the case of any successful action to enforce any liability under this section, the cost of the action together with reasonable attorney's fees as determined by the court.

§617. Civil liability for negligent noncompliance [15 U.S.C. §1681o]

- (a) In general. Any person who is negligent in failing to comply with any requirement imposed under this title with respect to any consumer is liable to that consumer in an amount equal to the sum of
1. Any actual damages sustained by the consumer as a result of the failure; and
  2. In the case of any successful action to enforce any liability under this section the costs of the action together with reasonable attorney's fees as determined by the court.

The FCRA provides for damages, punitive damages and attorney fees upon a successful suit to enforce liability under the Act.

Under the circumstances, plaintiff requests that the court enter summary judgment for plaintiff on the issue of liability.

Respectfully submitted,

Timothy J. Provost

cc: Jack Gross  
Goldberg & Associates  
75 Main Street  
Milburn, NJ 07041

### SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate where “the pleadings, the discovery and disclosed materials on file, and any affidavits show there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law.”

Fed.R.Civ.P.56(c). As the Supreme Court has indicated, “Summary Judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather an integral part of the Federal Rules as a whole which are designed to secure the just, speedy and inexpensive determination of every action.” Celotex Corp. v. Catrett, 477 U.S. 317,327 (1986). In deciding a motion for summary judgment, the judge’s function is to determine if there is a genuine issue for trial. “Josey v. John R. Hollingsworth Corp.,” 996 F.2d 632, 637 (3d Cir. 1993).

The moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact. Huang v. BP Amoco Corp., 271 F.3<sup>rd</sup> 560, 564 (3<sup>rd</sup> Cir. 2001) (citing Celotex Corp., supra, 477 U.S.at 323). In determining whether a factual dispute warranting trial exists, the court must view the record evidence and the summary judgment submissions in the light most favorable to the non-movant. Anderson v. liberty Lobby, Inc., 477 U.S. 242, 249 (1986). Issues of material fact are those “that might affect the outcome of the suit under the governing law.” Id. At 248. An issue is genuine when it is “triable,” that is, when reasonable minds could disagree on the result.



Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986) (citations omitted). If the moving party will bear the burden of persuasion at trial, the party must support its motion with credible evidence-using any of the materials specified in Rule 56 (c)- that would entitle it to a directed verdict if not controverted at trial. Celotex Corp., supra, 477 U.S. at 331. Such an affirmative showing shifts the “burden of production” to the party opposing the motion and requires the party to either demonstrate the existence of a “genuine issue” for trial or to request additional time for discovery under Rule 56(f). Fed. R. Civ. P. 56(e).

Once the moving party establishes the absence of a genuine issue of material fact, however, the burden shifts to the non-moving party to “do more than simply show that there is some metaphysical doubt as to the material facts.” Matsushita, 475 U.S. at 586. A party may not defeat a motion for summary judgment unless it sets forth specific facts, in a form that “would be admissible in evidence,” establishing the existence of a genuine issue of material fact for trial. Fed. R. Civ. P. 56(e) (providing that in response to a summary judgment motion the “adverse party may not rest upon the mere allegations or denials of [its] pleading, but the adverse party’s response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial”) See also Fireman’s Ins. Co. of Newark, N.J. v. DuFresne, 676 F.2d 965, 969 (3<sup>rd</sup> Cir. 1982); Olympic Junior, Inc v. David Crystal, Inc., 463 F. 2d 1141, 1146 (3<sup>rd</sup> Cir. 1972). If the nonmoving party’s evidence is a mere scintilla or is not “significantly probative,” the court may grant summary judgment. Liberty Lobby, Inc., supra, 477 U.S. at 249-250. The non-movant will prevail only if the evidence produced is of “sufficient quantum and

quality” to allow a rational and fair-minded fact finder to return a verdict in his favor, bearing in mind the applicable standard of proof that would apply at trial on the merits. Id. At 249. The facts of this case establish that defendant American Express acted with reckless disregard of plaintiff’s rights by continuing to furnish the credit reporters with false information after having received adequate notice that the information was false and inaccurate.

Sincerely,

Timothy J. Provost

cc: Jack Gross  
Goldberg & Associates  
75 Main Street  
Milburn, NJ 07041

Provost & Colrick, P.A.  
 Counselors At Law  
 50 Thoreau Drive  
 Freehold, NJ 07728  
 (732) 462-6262  
 (732) 462-6538 fax  
 Attorneys for Plaintiff

Nicholas Cosmas	United States District Court District of New Jersey
Plaintiff(s)	DOCKET NO.:07-CV-6099 (FLW)
vs.	CIVIL ACTION
American Express Centurion Bank	LIST OF EXHIBITS
Defendant(s)	

1. Exhibit I- Monthly Statement from American Express showing 600,295 rewards points.
2. Exhibit II- Deposition of Nicholas Cosmas page 104 line 23-25 and page 105-1-5.
3. Exhibit III- Letter from Nationwide Credit, Inc. regarding \$25,000.00 settlement payment.
4. Exhibit IV- Deposition of Nicholas Cosmas page 37 line 11-15.
5. Exhibit V- Letter from American Express dated June 7, 2004.
6. Exhibit VI- Letter from American Express dated August 17, 2004.
7. Exhibit VII- Defendants "redacted" tapes between Cosmas and representatives from American Express.
8. Exhibit VIII- Copy of American Express reporting as Individual Account.
9. Exhibit VIII- Report from Eco-Stat LLC.
10. Exhibit X- Notes from American Express mediator.

11. Exhibit XI- Copy of Judgment issued.
12. Exhibit XII- Copy of letter dated August 15, 2006 from Mr. Cosmas to American Express outlining credit problems.
13. Exhibit XIII- Copy of Letter dated August 29, 2006 from Mr. Cosmas to Equifax requesting correction of credit rating.
14. Exhibit XIII- Copy of letter dated September 26, 2006 from Equifax.
15. Exhibit XV- Deposition of defendant page 10 line 22-23 and page 18 line 4-6
16. Exhibit XVI- Deposition of defendant page 15 lines 13-24.

CERTIFICATION

Timothy J. Provost hereby certify that the foregoing list of documents are acute copies of documents referred to in the enclosed letter brief . All of the above statements made by me in the foregoing are true and correct to the best of my knowledge.

I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Date: \_\_\_\_\_

  
\_\_\_\_\_  
Timothy J. Provost



## Cards

For questions about your  
Membership Rewards account,  
contact

1-800-AXP-EARN  
(297-3276)

[www.americanexpress.com/rewards](http://www.americanexpress.com/rewards)

American Express  
Membership Rewards  
PO Box 297813  
Ft. Lauderdale, FL 33329-9785

# Membership Rewards® Monthly Statement and Program News

Page 1 of 2

American Express®



Statement Period

**October 1, 2003 - October 31, 2003**

Account activity after this period does not appear on this statement

Prepared for

**NICHOLAS C COSMAS**

Membership Rewards® Account Number

**1M98506345**

Available Points

**600,295**

Points are available when charges are paid in full and all your accounts are in  
good standing.

**Account Summary**

Opening points balance	616,766
New points earned	-16,471
Points transferred or redeemed	0
Reinstated points and adjustments	0
New points balance	=600,295

**New Points Earned**

10/01/03 - 10/31/03	Points Activity On Eligible Charges	Bonus Points Awarded	Forfeited Points Due To Late Payment	Total Points Activity Per Card
Gold 3718-219106-21002	0	0	0	0
Add'l Gold 3718-219106-21010	359	0	-522	-162
Add'l Gold 3718-219106-21036	0	0	-31	-31
Add'l Gold 3718-219106-27041	457	0	-2,426	-1,969
Add'l Gold 3718-219106-27058	7,929	537	-22,774	-14,308
		I Love NY Double Points 6073	10/2003	
Totals	8,745	537	-25,753	-16,471

Membership Rewards® points earned may be transferred or redeemed as long as all enrolled Card accounts are in good standing. Points transferred or  
redeemed cannot be reversed back into the program. Forfeited points can be reinstated for a fee by calling the number provided below.  
Eligible Card charges are outlined in the Membership Rewards® program Terms and Conditions in your Membership Rewards Guide. If you have questions  
please visit [www.americanexpress.com/rewards](http://www.americanexpress.com/rewards) or call 1-800-AXP-EARN (297-3276). From overseas, call collect 305-619-2788.

Continued on reverse



NICHOLAS C COSMAS  
22 REVERE CT  
PRINCETON JUNCTION NJ 08550-2162



Exhibit I

101

A. Yes.

Q. Who did you speak with?

A. I sent letters, okay, and then they sent me a letter back.

Q. You say you sent letters, more than one letter?

A. I sent letters, yes.

Q. How many letters?

A. I called. I tried calling and it makes it--

Q. Let's talk about the letters first please. How many letters did you send?

A. Well, I have a letter here that was an answer to my letter. Do you have a copy?

Q. I understand that. I'm talking about your letters to Amex. How many letters did you send?

A. I don't recall.

Q. Was it more than ten?

A. No.

Q. Was it more than five?

A. I would say, no.

Q. Was it more than one?

A. Yes.

Q. Okay. More than two?

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A. Yeah, probably.

Q. I don't know what to know possibly. I want to know your recollection.

A. My recollection is more than two.

Q. More than two. Do you have copies of those letters? Did you keep copies of both of those letters?

A. Yeah.

Q. Do you have them in that bag?

A. I must have something.

Q. Do you want to take a look for them please?

A. I have the letter from American Express.

Q. We'll take one at a time.

A. Tim, did I give you a copy of that this morning?

MR. PROVOST: I think it was given in discovery.

MR. GROSS: Off the record.

( A discussion off the record.)

MR. GROSS: We'll leave a blank in the transcript for Mr. Cosmas to provide that.

Q. So getting back to what we were

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1 speaking about, Mr. Cosmas, you wrote American Express at least twice about your reward point issues; is that correct?

A. Correct.

Q. And you received you believe one response; is that correct?

A. Correct.

Q. In return and that's actually attached to your letter of July 15th of 2004?

A. Yes.

Q. Is that correct?

A. Yes, July 15, 2004.

Q. That's what's attached to it?

A. Yes.

Q. Did you speak with anybody at American Express or did you just correspond with them?

A. I had in one of my letters someone that I spoke to and complimented to them that they were the only ones that ever got back to me. I see this director of customer service.

Q. Yes, I see that. So that tells you that you did speak with somebody at Amex?

A. I spoke to somebody at Amex, but this must have been a general before I spoke to anybody or whatever. Did they sign this?

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Q. How do you evaluate the value of those membership reward points? How do you arrive at your value?

A. I received from you there's that I circled the rules and regulations. Did you have a copy that you sent?

Q. I'm not sure I know what you're referring to.

A. Okay, there's the rules and regulations. Do you have --

MR. PROVOST: I'm sure we have it here somewhere, but I believe that's what you had sent to me the last time. I got it by express mail last week or so about reward points.

Q. Okay. So you looked at something that we sent to arrive at your valuation?

A. Which I knew beforehand because I had to purchase points.

Q. So that's what I am asking you.

Obviously, you had an idea before you got that documentation from my firm?

A. Right, how to value them.

Q.

A. I w

and I wa

105

107

1 phone if you want to purchase reward points, it's  
2 \$25 per thousand and all of a sudden I saw it on  
3 your -- I also saw it on your rules and  
4 regulations.

5 Q. If you wanted to purchase?

6 A. Yes.

7 Q. Did you see anything else in the rules  
8 and regulations, by the way, that you're  
9 referring to?

10 A. That's all I looked for.

11 Q. Did you see anything else other than  
12 what you may have looked for? Did you see  
13 anything else about may be when you waive the  
14 point and things of that nature? Did you see  
15 anything about that?

16 A. Well, I figured that --

17 Q. I'm asking a specific question.

18 A. -- if I saw --

19 Q. Whether you saw --

20 A. I didn't want to go through the whole  
21 thing. I saw it quickly.

22 Q. Did you see --

23 A. That there were rules and regulations.

24 Q. Did you see anything about how you  
25 might forfeit points? Did you see anything in

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1 that document when you looked at it?

2 A. Did I see anything?

3 Q. Yes.

4 A. I saw something that you had regulations if  
5 a person doesn't pay.

6 Q. What was the regulation?

7 A. You could forfeit points.

8 Q. So you are aware of that as well?

9 A. But I figured that your letter to me  
10 supersedes what's there.

11 Q. All right. Which letter to you?

12 A. The American Express letter written  
13 behind --

14 Q. This letter supersedes the terms and  
15 conditions of that rewards program?

16 A. Well --

17 Q. Is that what you're saying? I just  
18 want to make sure I understand what you're  
19 saying.

20 A. This letter says that your points are not  
21 being given, you know, your points are not being  
22 given because your corporate card is delinquent.  
23 In 2006 I was proven that the corporate card did  
24 not belong to me so I wasn't delinquent therefore  
25 according to the letter --

1 Q. Right.

2 A. -- the points are to be reinstated.

3 Q. So let me step back for a minute.

4 Although I didn't see in the letter that the  
5 points will be reinstated -- we'll get to that,  
6 trust me. But what I'm asking you about is  
7 whether you saw in that rewards points agreement  
8 language about forfeiting your points? Did you  
9 see that? I never got a clear answer. That is  
10 what I'm asking again.

11 A. I saw something. I just glanced it at when  
12 I saw the forfeited.

13 Q. That's what I'm asking. I'm not sure  
14 there's a difference between glanced and looked  
15 at it. Did you see the language?

16 A. I saw there was something about it, but I  
17 was looking quickly to see how I purchase the  
18 value of these points.

19 Q. Let's put it another way. Were you  
20 aware if you fail to make payments you forfeit  
21 your reward points? Are you aware of that?

22 A. No.

23 Q. You're not aware of that?

24 A. No.

25 Q. Didn't you just tell me that a moment

1 ago that you saw that language in the agreement?

2 A. I saw something as I was going through that  
3 you could forfeit. I didn't analyze and see how  
4 you forfeit points.

5 Q. I'm not asking you whether you  
6 analyzed it. I'm just asking as you sit here  
7 today are you aware of that fact?

8 A. You're making me aware.

9 Q. I'm making you aware?

10 A. Yeah.

11 Q. You weren't aware before this  
12 discussion? You read it there. Did you read it  
13 in --

14 A. I just happened to see as I was looking for  
15 a purchase that there is a column, but I did not  
16 read it.

17 Q. You didn't read it?

18 A. No.

19 Q. So you weren't aware?

20 A. Right.

21 Q. And did you receive statements from  
22 American Express?

23 A. Statements?

24 Q. On your gold card?

25 A. Of course.

03/15/1994 20:57 502-379-2245

NATIONWIDE CREDIT  
NATIONWIDE CREDIT

PAGE 02  
PAGE 02

**Nationwide Credit, Inc.**

3600 E. University Dr., Suite B-1150 • Phoenix, AZ 85034 • 1-800-869-2070 • Fax: 602-379-2245

April 30, 2004

Nicholas Cosmas  
22 Revere Ct.  
Princeton, NJ 08550

Re: American Express Account Number 371821910821002

Dear Mr./Ms. Cosmas:

The above American Express account was settled with our Agency in the amount of \$25,000.00 on 03/30/04.

If you should have any questions regarding this matter, please contact us at (800) 869-2070.

Sincerely,

Heather Ousley  
Client Services

This communication is from a debt collector.  
See reverse side for important information.

Exhibit III



37

A. Yes.

Q. Now could you set out for me all of the claims that you have against American Express in this lawsuit? What are your claims against them?

A. All of the claims, yes. My other credit card because of the damage to my credit, I was charged additional interest rates higher on any card that I had. I had on my personal account over 600,000 reward points that were not never reinstated. Complete harassment from 2004 to 2008 continued till Mr. Provost appeared before the judge in order to cease these harassing calls. And what else? The monetary. Well, there's punitive damages for the...

Q. I'm listening so go ahead, list everything, all of the claims for me that you have against American Express.

A. Well, now I have legal fees. I also had to pay the -- we also had to pay the economist. I was damaged with these items.

Q. Anything else?

A. In fact, I'm here today, you know, to appear for depositions now. I live in North Carolina.

38

Q. Anything else?

A. As far as I could think of right now that's it.

Q. Let's talk about these various things bit by bit. Your first claim that you listed was that you have higher interest rates on various credit cards that you had?

A. Right.

Q. Other credit cards that you had; is that correct?

A. Right, yes.

Q. Could we first list all of those various credit cards that you had and I guess this is as you say late '03, early '04?

A. Yes, early '04 to -- well, can I ask a question off the record?

Q. I don't think so.

A. You play a hard ball game.

Q. I'm sorry, I don't make the rules. I just play by the rules.

A. Am I supposed to answer?

Q. You're supposed to answer to the best of your ability.

A. Okay. I'm asking did you receive the economist's report or...

39

1 Q. I received all kinds of things, but  
2 what I'm asking you is your recollection.

3 A. Yes. Chase.

4 Q. What else?

5 A. Bank America. I have a list in there. I  
6 could tell you if you...

7 Q. The list, you mean from the expert's  
8 report?

9 A. No, I have the list, some analysis that I  
10 did.

11 Q. That you, yourself did?

12 A. That I checked -- no, that I put the names  
13 down.

14 Q. On a list?

15 A. Yeah.

16 Q. A list that your attorney has or that  
17 you have somewhere?

18 A. That I have.

19 Q. On your person?

20 A. I have it in this bag.

21 Q. Sure. Bring it out.

22 A. Of all the names?

23 Q. Sure.

24 A. Capital One.

25 Q. Could you just bring out the sheet,

40

1 Mr. Cosmas.

2 A. I just made a -- okay, I see.

3 Q. You could just bring it out. Bring it  
4 out just so we can refer to it. It's just easier  
5 and clearer that way.

6 A. Capital One, Chase, Discover, Fleet, Bank  
7 of America, Harris Bank. I think Harris became  
8 MBNA and that's it.

9 Q. May I see the sheet, sir?

10 A. Does this pertain -- I mean, this is my  
11 notes.

12 Q. It all pertains.

13 A. But it's my notes.

14 Q. I understand, but it all pertains.  
15 May I take a look at it?

16 A. I don't know.

17 MR. PROVOST: May I take a look at this  
18 work sheet you're talking about.

19 MR. GROSS: Could I get a copy of this so  
20 I can mark it?

21 MR. PROVOST: Sure.

22 MR. GROSS: So I can ask some questions  
23 about it.

24 (A recess is taken.)

25 Q. Are there any

Exhibit IV

American Express  
Travel Related Services Company, Inc.  
Service Center at Ft. Lauderdale  
PO Box 297812  
Ft. Lauderdale, FL 33329-7812

June 7, 2004



NICHOLAS C. COSMAS,  
22 REVERE COURT  
PRINCETON JUNCTION NJ 08550-2162

|||||

Account Number: 3718-219106-21002

Dear Nicholas C. Cosmas:

Thank you for your recent inquiry concerning your Membership Rewards(R) account.

Unfortunately, we are unable to reinstate your Membership Rewards points at this time. Our records indicate that your Corporate Card account number 3783-479639-41009 has been cancelled. Please contact our Credit Department directly to discuss this matter further.

Please call 1-800-AXP-EARN (297-3276), if we can be of further assistance.

Sincerely,

L. Seiser  
Supervisor, Customer Service

E 371821910621002 12101 SOLNY10 SOLN271

2912F

N FT

Exhibit V



Cards

American Express Cards  
American Express Service Center  
777 American Expressway  
Fort Lauderdale, FL 33337-0001

August 17, 2004

Nicholas C. Cosmas  
22 Revere Ct.  
Princeton Junction, NJ 08550-2162

Re: Membership Rewards Account 1M78506345

Dear Mr. Cosmas:

Thank you for your correspondence to the Executive Offices of American Express. I have been asked to respond on their behalf. In your letter, you expressed concern over the status of the above referenced Account and the forfeited Membership Rewards points.

I have reviewed the information you provided, along with the Customer Service files and your relationship with American Express. Our records indicate that on September 19, 2003 you were advised that you are responsible for the business Account. In addition, that business Account would impact your ability to redeem the Membership Rewards points. Please note that, according to the terms and conditions of the Membership Rewards program, if an Account is cancelled for a derogatory reason, the points are immediately forfeited. You were advised of this in the past. Our position has not changed.

Mr. Cosmas, I regret that I cannot offer a more favorable response, and I do hope that you will understand our position in this matter. Perhaps future circumstances will allow us to resume our business relationship.

Sincerely,

Victoria Babich  
Executive Assistant

American Express Travel Related  
Services Company, Inc.

Exhibit VI

05/25/2004 0699 tom .... you need to get cm back on th 221 03  
 05/25/2004 0699 e phone advs needs at least 10% dwn fo 221 03  
 05/25/2004 0699 r you to hld the acct for the 30 k ... 221 03  
 05/26/2004 0699 F/U DATE-TIME 2004-05-27 11:30:00 A 039 03  
 05/27/2004 0699 F/U DATE-TIME 2004-05-30 11:30:00 A 039 03

[REDACTED]

05/28/2004 0699 CHANGE MODE ACTIVATED 002 03  
 05/28/2004 0699 CHANGE MODE ACTIVATED 002 03  
 5/12/05 Collector Notes Cosmas Nicholas 12 OPS  
 05/28/2004 0699 ///gave scell 917 826 7089 002 03  
 05/30/2004 0699 PRM DATE-AMT 2004-05-31 \$1.00 039 03  
 05/30/2004 0699 F/U DATE-TIME 2004-05-31 11:30:00 A 039 03  
 05/31/2004 0699 F/U DATE-TIME 2004-05-31 05:00:00 P 039 03  
 06/03/2004 0699 PRM DATE-AMT 2004-06-30 \$1.00 039 03  
 06/03/2004 0699 F/U DATE-TIME 2004-06-04 08:00:00 A 039 03  
 06/04/2004 0699 AX ADDTNL POST-PLCMNT MEDIA RECEIVED 03  
 06/04/2004 0699 gmid, sys they are negotiating on 039 03  
 06/04/2004 0699 reievables. rfsd to set any ppa or pro 039 03  
 06/04/2004 0699 ve intentions. 039 03

DATE: 12/07/07 5/17/04 FILE NOTES PRINTED BY: KC PG: 5 File  
 #: 5-08525-0

06/04/2004 0699 F/U DATE-TIME 2004-06-07 08:00:00 A 039 03  
 06/04/2004 0699 CHANGE MODE ACTIVATED 030 03  
 06/04/2004 0699 wmn sd cm nt there--id self as office 030 03  
 06/04/2004 0699 manager diana--gmid--gd4p--explained s 030 03  
 06/04/2004 0699 ituation--clms is nt one respons 4 bil 030 03  
 06/04/2004 0699 ls--adv is her compny and she in mngmn 030 03  
 06/04/2004 0699 t and she nds 2 either gt me 2 person 030 03  
 06/04/2004 0699 who deals w/ this or deal w/ this hers 030 03  
 06/04/2004 0699 elf 030 03  
 06/04/2004 0699 CHANGE MODE ACTIVATED 030 03  
 06/04/2004 0699 F/U DATE-TIME 2004-06-07 05:00:00 P 030 03  
 5/12/05 Collector Notes Cosmas Nicholas 13 OPS  
 06/04/2004 0699 CHANGE MODE ACTIVATED 030 03  
 06/04/2004 0699 F/U DATE-TIME 2004-06-07 04:45:00 P 030 03  
 06/04/2004 0699 CHANGE MODE ACTIVATED 030 03  
 06/04/2004 0699 notes cont--adv diana acosta office mn 030 03  
 06/04/2004 0699 gr hv 2 mk dcsn by 5pm tdy and cb--sd 030 03  
 06/04/2004 0699 will rch cm and either gt him 2 cll or 030 03  
 06/04/2004 0699 she will cll me bck by 5pm 030 03  
 06/04/2004 0699 CHANGE MODE ACTIVATED 030 03

Exhibit VII

The following accounts contain information that some creditors may consider to be adverse. Adverse account information may generally be years from the date of the first delinquency, depending on your state of residence. The adverse information in these accounts has been prior to brackets or is shaded for your convenience, to help you understand your report. They are not bracketed or shaded this way for creditors account # may be scrambled by the creditor for your protection).

PO BOX 297871  
FORT LAUDERDAL , FL 33329-7871  
(800) 874-2717

Balance:	\$42,329
Date Updated:	12/2005
High Balance:	\$43,529
Past Due:	>\$42,329<

<b>Pay Status:</b>	>Charged Off as
<b>Account Type:</b>	Open Account
<b>Responsibility:</b>	Individual Account
<b>Date Opened:</b>	05/1996
<b>Date Closed:</b>	10/2003

**Loan Type:** Credit Card  
**Remark:** Account closed by credit grantor

800 BROOKSEGE BLV  
WESTERVILLE, OH 43081  
(800) 955-9900

<b>Balance:</b>	\$0
<b>Data Updated:</b>	11/2005
<b>High Balance:</b>	\$19,554
<b>Credit Limit:</b>	\$19,500
<b>Part Due:</b>	\$0

<b>Pay Status:</b>	Paid or Paying as
<b>Account Type:</b>	Revolving Account
<b>Responsibility:</b>	Authorized Account
<b>Date Opened:</b>	02/1994
<b>Date Closed:</b>	07/2005
<b>Date Paid:</b>	12/2003

**Loan Type:** Credit Card  
**Remark:** Account closed by credit grantor

**Late Payments**  
48 months

**Last 48 Months**      Oct Sep Aug Jul Jun May Apr Mar Feb '06 Dec Nov Oct Sep Aug Jul Jun May Apr Mar Feb

PO BOX 3117  
WINSTON SALEM, NC 27102  
Phone number not available

<b>Balance:</b>	\$0
<b>Date Verified:</b>	12/2001
<b>High Balance:</b>	\$23,598
<b>Past Due:</b>	\$0
<b>Terms:</b>	\$0 for 36 months

<b>Pay Status:</b>	Paid or Paying as
<b>Account Type:</b>	Installment Acco
<b>Responsibility:</b>	Co-Signor on Acc
<b>Date Opened:</b>	10/1998
<b>Date Closed:</b>	12/2001

**Loan Type: Lease**

Remarks: Closed

**Late Payments**  
32 months

Last 32 Months  
 X  
 10Y OCT SEP AUG JUL JUN MAY APR MAR FEB '01 DEC NOV OCT SEP AUG JUL JUN MAY APR MAR

PO BOX 4604  
BUFFALO, NY 14240  
(800) 874-2100

Balance:	\$137,428
Date Updated:	12/2005
High Balance:	\$150,898
Credit Limit:	\$150,000
Past Due:	>\$2,530<
Terms:	Minimum \$1,327

<b>Pay Status:</b>	> 30 Days Past D
<b>Account Type:</b>	Line of Credit Ac
<b>Responsibility:</b>	Joint Account
<b>Date Opened:</b>	09/2003
<b>Date Closed:</b>	07/2005

**Loan Type:** Home Equity Loan

Remarks Account closed by credit grantor  
>Maximum delinquency of 90 days in 08/2005<

**Late Payments**  
27 months

Last 27 Months  
 10% 50% 90% Aug Jul Jun May Apr Mar Feb 10% Dec 10% 50% Sep Aug Jul Jun May Apr Mar  
 10% 50% Sep

The following accounts are reported with no adverse information. (Note: The account # may be scrambled by the creditor for your protection)

<https://annualcreditreport.transunion.com/tab/product/report/single?addScore=false&cb=FA> 1/10/2006

Exhibit VIII

# ECO-STAT LLC

ECONOMIC & STATISTICAL CONSULTANTS

## New Jersey

100 Eagle Rock Ave., Suite 200  
East Hanover, NJ 07936  
973.929.3532 Tel  
973.929.3533 Fax

ecostat@friedmanllp.com  
www.ecostat.com

## New York

1700 Broadway, 23rd Floor  
New York, New York 10019  
212.842.7695 Tel  
212.842.7001 Fax

(800) ECO-STAT Tel  
(888) ECO-STAT Fax

August 21, 2008

Timothy Provost, Esq.  
PROVOST & COLRICK  
50 Thoreau Drive  
Freehold, New Jersey 07728

**Re: Nicholas Cosmas**  
**Our Case # 508493**

Dear Mr. Provost:

At your request, we have analyzed Mr. Nicholas Cosmas' economic loss as a result of American Express' delinquency notation on Mr. Cosmas' credit report as well as their failure to remove such notation in April 2004 after a Court order.

We were informed that as a result of such notation on Mr. Cosmas' credit report, he began to be charged higher interest rates by other credit card companies. From our review of Mr. Cosmas' credit card account statements, we calculated his overcharged financial fees. The following tables show Mr. Cosmas' loss incurred by his credit cards with Bank of America (Account # 9129), Chase (Account # 0191), Fleet (Account # 6182), Harris Bank (MBNA) (Account # 3838), and Harris Bank (Accounts # 3953 & #8446).

Exhibit VIII

**The Value of Nicholas Cosmas' Bank of America Credit Card # xxxxxxxxxxxxx9129**

<u>Date</u>	<u>Interest Rate</u>	<u>Balance</u>	<u>Inflated Rate</u>	<u>Over- Charged</u>
10/5/2005	14.74%	\$15,079.90	0.00%	0.00
11/4/2005	25.74%	14,795.09	11.00%	\$133.76
12/5/2005	25.99%	14,587.36	11.00%	136.28
1/6/2006	26.24%	14,431.86	11.00%	139.18
2/4/2006	26.24%	14,163.62	11.00%	123.79
3/6/2006	26.49%	13,885.85	11.00%	125.54
4/5/2006	26.74%	13,704.24	11.00%	123.90
5/4/2006	26.74%	13,509.88	11.00%	118.07
6/6/2006	26.99%	13,289.04	11.00%	132.16
7/6/2006	27.24%	13,079.48	11.00%	118.25
8/4/2006	27.24%	12,754.71	11.00%	111.47
9/6/2006	27.24%	12,831.78	11.00%	127.61
10/5/2006	27.24%	14,058.55	11.00%	122.87
11/4/2006	27.24%	12,529.98	11.00%	113.28
12/5/2006	27.24%	1,401.35	11.00%	13.09
1/5/2007	27.24%	1,140.57	11.00%	10.66
2/5/2007	27.24%	1,148.91	11.00%	10.73
3/6/2007	27.24%	944.41	11.00%	8.25
4/5/2007	27.24%	725.88	11.00%	6.56
5/4/2007	27.24%	490.12	11.00%	4.28
6/6/2007	27.24%	258.69	11.00%	2.57
7/6/2007	27.24%	109.59	11.00%	0.99
8/8/2007	27.24%	1.04	11.00%	0.01
9/6/2007	27.24%	3,686.38	11.00%	32.22
10/4/2007	26.74%	3,954.14	11.00%	33.37
11/5/2007	26.74%	6,223.01	11.00%	60.01
12/6/2007	26.49%	7,539.94	11.00%	70.44
1/7/2008	26.24%	8,783.71	11.00%	84.71
2/5/2008	24.99%	9,172.57	11.00%	80.17
3/6/2008	18.74%	9,468.12	4.75%	36.96
4/4/2008	17.99%	9,454.82	4.00%	30.05
5/5/2008	17.99%	1,263.83	4.00%	4.29
6/5/2008	17.74%	633.44	3.75%	<u>2.02</u>
<b>TOTAL:</b>				<b>\$2,117.58</b>

**The Value of Nicholas Cosmas' Chase Credit Card # xxxxxxxxxxxx0191**

<u>Date</u>	<u>Interest Rate</u>	<u>Balance</u>	<u>Inflated Rate</u>	<u>Over- Charged</u>
3/25/2005	9.99%	\$12,882.19	0%	
4/25/2005	18.74%	12,082.66	8.75%	\$192.31
5/24/2005	18.99%	11,562.29	8.75%	174.45
6/24/2005	10.49%	11,164.31	0%	
7/1/2005	10.74%	10,771.48	0%	
8/1/2005	10.99%	10,367.70	0%	
9/1/2005	11.24%	9,965.46	0%	
10/1/2005	11.24%	9,556.72	0%	
11/1/2005	11.49%	9,249.29	0%	
12/1/2005	11.74%	8,937.69	0%	
1/1/2006	11.74%	8,726.00	0%	
2/1/2006	11.99%	8,514.22	0%	
3/1/2006	11.99%	8,422.44	0%	
4/1/2006	12.24%	8,259.53	0%	
5/1/2006	12.49%	8,093.89	0%	
6/1/2006	12.49%	7,879.07	0%	
7/1/2006	12.74%	7,761.45	0%	
8/1/2006	12.74%	7,595.02	0%	
9/1/2006	12.74%	7,522.11	0%	
10/1/2006	12.74%	7,400.66	0%	
11/1/2006	12.74%	7,180.02	0%	
12/1/2006	12.74%	6,954.34	0%	
1/1/2007	12.74%	6,728.32	0%	
2/1/2007	12.74%	6,500.26	0%	
3/1/2007	12.74%	6,363.68	0%	
4/1/2007	12.74%	6,232.00	0%	
5/1/2007	12.74%	5,996.76	0%	
6/1/2007	12.74%	5,760.85	0%	
7/1/2007	12.74%	5,620.65	0%	
8/1/2007	12.74%	5,480.96	0%	
9/1/2007	12.24%	5,287.05	0%	
10/1/2007	12.24%	5,089.49	0%	
11/1/2007	11.99%	4,890.59	0%	
12/1/2007	11.74%	4,737.16	0%	
1/1/2008	10.99%	4,480.59	0%	
2/1/2008	10.49%	4,269.75	0%	
3/1/2008	9.74%	4,202.62	0%	
4/1/2008	9.74%	4,152.20	0%	
5/1/2008	9.49%	4,084.37	0%	
<b>TOTAL:</b>				<b>\$366.76</b>



**The Value of Nicholas Cosmas' Fleet Credit Card # xxxxxxxxxxxxx6182**

<u>Date</u>	<u>Interest Rate</u>	<u>Balance</u>	<u>Inflated Rate</u>	<u>Over- Charged</u>
1/10/2006	13.24%	\$290.98	0%	
2/10/2006	18.24%	234.96	5.00%	\$1.00
3/10/2006	18.49%	227.21	5.00%	0.87
4/10/2006	18.74%	214.98	5.00%	0.91
5/10/2006	15.65%	2,776.44	5.00%	11.41
6/10/2006	17.19%	3,675.50	5.00%	15.61
7/10/2006	19.24%	3,850.91	5.00%	15.83
8/10/2006	18.78%	7377.11	5.00%	31.33
9/10/2006	18.98%	8,129.20	5.00%	34.52
10/10/2006	19.12%	8,256.39	5.00%	33.93
11/9/2006	19.24%	7,563.15	5.00%	31.08
12/9/2006	19.24%	1.69	5.00%	0.01
1/11/2007	19.24%	8,677.10	5.00%	39.23
2/9/2007	19.24%	8,253.77	5.00%	32.79
3/12/2007	19.24%	8,193.56	5.00%	34.79
4/11/2007	19.24%	8,035.80	5.00%	33.02
5/10/2007	19.24%	7,807.59	5.00%	31.02
6/12/2007	27.99%	7,660.52	13.75%	95.23
7/12/2007	27.99%	5,745.74	13.75%	64.93
8/10/2007	4.99%	11,111.34	0%	0
9/11/2007	4.99%	12,696.05	0%	0
<b>TOTAL:</b>				<b>\$507.51</b>

**The Value of Nicholas Cosmas' Harris (MBNA) Credit Card # xxxxxxxxxxxx3838**

<u>Date</u>	<u>Interest Rate</u>	<u>Balance</u>	<u>Inflated Rate</u>	<u>Over- Charged</u>
10/1/2005	12.99%	\$6,154.82		
11/1/2005	23.99%	6,352.71	11.00%	\$59.35
12/1/2005	23.99%	6,007.07	11.00%	54.31
1/1/2006	23.99%	5,647.84	11.00%	52.76
2/1/2006	23.99%	5,373.84	11.00%	50.20
3/1/2006	23.99%	5,491.89	11.00%	46.34
4/1/2006	23.99%	5,465.38	11.00%	51.06
5/1/2006	23.99%	5,279.60	11.00%	47.73
6/1/2006	23.99%	5,132.56	11.00%	47.95
7/1/2006	23.99%	5,179.25	11.00%	46.83
8/1/2006	23.99%	5,421.43	11.00%	50.65
9/1/2006	28.24%	5,620.46	15.25%	72.80
10/1/2006	28.24%	5,988.46	15.25%	75.06
11/1/2006	28.24%	6,181.33	15.25%	80.06
12/1/2006	28.24%	6,464.66	15.25%	81.03
1/1/2007	28.24%	6,370.92	15.25%	82.52
2/1/2007	28.24%	6,810.81	15.25%	88.21
3/1/2007	28.24%	6,807.49	15.25%	79.64
4/1/2007	28.24%	6,534.66	15.25%	84.64
5/1/2007	28.24%	6,504.17	15.25%	81.52
6/1/2007	28.24%	6,334.01	15.25%	82.04
7/1/2007	28.24%	6,660.14	15.25%	83.48
8/1/2007	26.99%	6,499.78	14.00%	77.29
9/1/2007	26.99%	6,080.75	14.00%	72.30
10/1/2007	26.49%	5,956.64	14.00%	68.54
11/1/2007	26.49%	5,924.09	14.00%	70.44
12/1/2007	26.24%	5,792.14	14.00%	66.65
1/1/2008	25.99%	5,697.62	13.75%	66.54
2/1/2008	24.74%	5,493.23	12.50%	58.32
3/1/2008	24.74%	5,313.05	12.50%	52.77
4/1/2008	23.99%	5,216.30	11.75%	52.06
5/1/2008	23.99%	5,052.53	11.75%	<u>48.79</u>
		<b>TOTAL:</b>		<b>\$2,031.88</b>

**The Value of Nicholas Cosmas' Harris Bank Credit Cards# xxxxxxxxxxxx3953 & 8446**

<u>Date</u>	<u>Interest Rate</u>	<u>Balance</u>	<u>Inflated Rate</u>	<u>Over- Charged</u>
10/1/2004	13.90%	\$6,770.53	0%	
11/1/2004	16.49%	6,546.54	2.59%	\$14.40
12/1/2004	16.74%	6,201.37	2.59%	13.20
1/1/2005	16.99%	5,998.41	2.59%	13.19
2/1/2005	16.99%	5,737.43	2.59%	12.62
3/1/2005	17.24%	5,319.63	2.59%	10.57
4/1/2005	17.49%	5,002.63	2.59%	11.00
5/1/2005	17.49%	4,622.51	2.59%	9.84
6/1/2005	17.74%	4,215.53	2.59%	9.27
7/1/2005	17.74%	3,757.16	2.59%	8.00
8/1/2005	17.99%	3,249.99	2.59%	7.15
9/1/2005	18.24%	2,864.62	2.59%	6.30
10/1/2005	18.49%	2,523.15	2.59%	5.37
11/1/2005	18.49%	2,166.82	2.59%	4.77
12/1/2005	18.74%	1,851.43	2.59%	3.94
1/1/2006	18.99%	1,656.93	2.59%	3.64
2/1/2006	18.99%	1,455.41	2.59%	3.20
3/1/2006	19.24%	1,440.19	2.59%	2.86
4/1/2006	19.49%	1,410.55	2.59%	3.10
5/1/2006	19.49%	1,349.61	2.59%	2.87
6/1/2006	19.74%	1,234.58	2.59%	2.72
7/1/2006	19.99%	1,128.38	2.59%	2.40
8/1/2006	19.99%	993.07	2.59%	2.18
9/1/2006	19.99%	890.10	2.59%	1.96
10/1/2006	19.99%	800.69	2.59%	1.70
11/1/2006	19.99%	714.33	2.59%	1.57
12/1/2006	19.99%	626.83	2.59%	1.33
1/1/2007	19.99%	484.53	2.59%	1.07
2/1/2007	19.99%	450.44	2.59%	0.99
3/1/2007	19.99%	413.72	2.59%	0.82
4/1/2007	19.99%	366.82	2.59%	0.81
5/1/2007	19.99%	321.57	2.59%	0.68
6/1/2007	19.99%	279.90	2.59%	0.62
7/1/2007	19.99%	229.41	2.59%	0.49
8/1/2007	19.99%	163.65	2.59%	0.36
9/1/2007	19.99%	117.65	2.59%	0.26
10/1/2007	19.49%	98.39	2.59%	<u>0.21</u>
<b>TOTAL:</b>				<b>\$165.49</b>

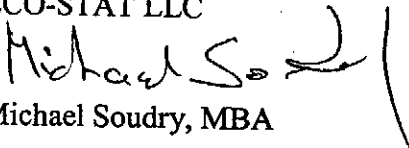
Mr. Cosmas' total financial overcharge is found to be \$5,189.00. Mr. Cosmas also lost his American Reward Points at the time his American Express card was canceled. Mr. Cosmas' statement dated September 30, 2003 shows his total Reward Points were 616,766. In a letter dated April 7, 2004 American Express informed Mr. Cosmas that because his corporate card account #41009 had been canceled he would be unable to reinstate his Reward Points to his account # 21002.

From information provided to us and our economic loss analysis we find the value of Mr. Cosmas' economic loss to be **\$5,189.00**, not including his lost American Express Reward Points.

Mr. Cosmas also claims that as a result of American Express' notation on his credit report, his ability to use his Chase credit card (Account # 0191) ended in June 2006, and thus he claims loss of opportunity to benefits from the interest rate he was charged at the time.

Very truly yours,

ECO-STAT LLC

  
Michael Soudry, MBA

... until 1/20/06 to provide	53,122.28
... responses. Told him I'll ck	53,122.28
... w/atty & get back to him.	53,122.28
DC< Call to Defendant - advised	53,122.28
... him since this is a Law Div.	53,122.28
... case he has 60 days in which	53,122.28
... to respond to discovery. TLH	53,122.28
11/22/05 DC< spk w/def trnsfrd to TLH PJM	53,122.28
DC< Debtor Called: w/questions as	53,122.28
... to the Req.for Adm. Wanted to	53,122.28
... know if he needed to sign	53,122.28
... anything. Told him to	53,122.28
... complete his responses &	53,122.28
... return to our office. TLH	53,122.28
12/12/05 DC< Debtor Called: wanted to know	53,122.28
... add. and time limit for	53,122.28
... interrogatories, gave add, and	53,122.28
... advised 60days JMH	53,122.28
... TC from mediator Ron Berger-	53,122.28
... wants to have conference call	53,122.28
... on 12/29 @ 10:00am, I will set	53,122.28
... up the call. GTP	53,122.28
12/13/05 SVD CM Served w/Lawsuit: 10/13/05	53,122.28
D:A RVS Diary Code Added	53,122.28
LFN Letter from Our Network Atty-	53,122.28
... Atty advises CM completing	53,122.28
... request for admissions	53,122.28
D:D RCD Diary Deleted By HJT	53,122.28
D:D RVS Diary Deleted By HJT HJT	53,122.28
12/29/05 ... Had conference call w/def &	53,122.28

DATE: 12/07/07 5/17/04 FILE HISTORY  
File #: 5-08525-0

... mediator. We scheduled	53,122.28
... in-person mediation for 2/15 @	53,122.28
... 10:00 in our office. I am to	53,122.28
... circulate statement of the	53,122.28
... case approx 1 week prior to	53,122.28
... mediation. [REDACTED]	53,122.28
... [REDACTED]. We have also been	53,122.28
... requested to submit docs to	53,122.28
... show that def is personally	53,122.28
... liable for this debt as he	53,122.28
... alleges he was merely an	53,122.28
... employee of the company. GTP	53,122.28

PRINTED BY: KC PG: 30

Exhibit X

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31

**A True Copy**

*Sue Regan*

DONALD F. PHILAN  
CLERK OF SUPERIOR COURT  
SUPERIOR COURT OF N.J.  
MERCER COUNTY  
RECEIVED AND FILED

AUG 10 2006

PREPARED BY THE COURT

SUE REGAN

Deputy Clerk of Superior Court

American Express Centurion Bank

Plaintiff(s)

-VS-

Nicholas Cosmas

Defendant(s)

Superior Court of New Jersey  
Law Division  
Mercer Vicinage  
Docket #: L-2410-05

Civil Action

**JUDGMENT**

THIS MATTER, having been tried before The Honorable Paul Innes, J.S.C. on August 7, 2006; and the court having entered a verdict of no cause of action;

IT IS on this 10<sup>th</sup> day of August, 2006 hereby

**ORDERED** that judgment is entered in favor of the defendant, Nicholas Cosmas; and against plaintiff, American Express Centurion Bank; and

**IT IS FURTHER ORDERED** that plaintiff's Complaint is dismissed with prejudice and without costs to either party; and

**IT IS FURTHER ORDERED** that a copy of this Order shall be served upon all parties within a period of seven (7) days:

*Paul Innes, JSC*  
Paul Innes, JSC

Cc: Hillary Veldhuis, Esq.  
Nicholas Cosmas

Exhibit XI

00 Box

Mrs Judy McCoy  
 AMERICAN EXPRESS  
 INTERNAL COLLECTION  
 800-700-7619

Nicholas Cosmas  
 22 Revere Court  
 Grinceton NJ New Jersey 0853  
 609 897-9657  
 August 15, 2006

Re- 3783-479639-41009  
 3718-219106-21002

Dear Mrs McCoy

It was a pleasure dealing with someone who showed interest in helping a card member. Attached is a copy of the court document showing judgment in my favor. Because of the frivolous litigation brought by American Express I was penalized in three different matters.

1) I HAVE ALWAYS HAD A GOOD CREDIT RATING, DUE TO THE ABOVE MY RATING WAS TARNISHED, I WOULD APPRECIATE YOU INFORMING THE CREDIT COMPANIES OF THE DECISION BY THE COURT

DUE TO THE ABOVE ALL MY CREDIT CARDS INCREASED THE RATE OF INTEREST ON MY BALANCES, IT ALSO AFFECTED MY MORTGAGE RATE WHEN I REFINANCED. NEEDLESS TO SAY IT HAS COST ME MUCH MONEY  
 2) ON MY PERSONAL AMEX ACCOUNT I HAD OVER 50,000 DTS WHICH WERE TAKEN AWAY DUE TO THE PENDING LITIGATION.

AS YOU CAN SEE IT HAS BEEN A COSTLY EXPERIENCE! FOR WHICH I AM SEEKING RESTITUTION. THANK YOU

Yours truly,  
 Nicholas Cosmas  
 609 897 9657

Exhibit XII



Tell and Ellen

22 Revere Court

Princeton NJ New Jersey 08540

August 29 2006

Equifax Service

Re Conf # 6241033935

As per our telephone conversation, enclosed is a copy of the Court document received showing a dismissal of American Express' Complaint against ME. Please adjust my credit report accordingly. Also please correct the other items discussed on the telephone. Thank

You.

Yours truly,  
Epiphany Ramos  
609 897 9657

Exhibit XIII

To Equipat  
ATTN Conf # 624 1033935

From A Cosmas  
Tel 604 897 9657.

P.O. Box 105518  
Atlanta, GA 30348

September 26, 2006

**EQUIFAX**



To Start An Investigation, Please Visit Us At  
[www.investigate.equifax.com](http://www.investigate.equifax.com)

000317

000562767-917  
Nicholas Cosmas  
22 Revere Ct  
Princeton Junction, NJ 08550-2162

Dear Nicholas Cosmas:

Below are the results of your request for Equifax to reinvestigate certain elements of your Equifax credit file. Equifax contacted each source directly and our investigation is now completed. If you have any additional questions or concerns, please contact the source of that information directly.

**Results of Your Investigation** For your month ending 8/31/06, your credit account balance was \$0.00.

>>> **We have researched the credit account. Account # - 02745362001833\* The results are:** This creditor has verified to Equifax that the balance is being reported correctly. Additional information has been provided from the original source regarding this item. If you have additional questions about this item please contact: **Amex, P.O. Box 7871, Fort Lauderdale, FL 33329**

If you have any additional questions regarding the information provided to Equifax by the source of any information, please contact the source of that information directly. You may contact Equifax regarding the specific information contained in this letter within the next 60 days by visiting us at [www.investigate.equifax.com](http://www.investigate.equifax.com).

Thank you for giving Equifax the opportunity to serve you.

#### **Notice to Consumers**

Upon receipt of your dispute, we first review and consider the relevant information you have submitted regarding nature of your dispute. If the review does not resolve your dispute and further investigation is required, notification of your dispute, including the relevant information you submitted, is provided to the source that furnished the dispute information. The source reviews the information provided, conducts an investigation with respect to the disputed information and reports the results back to us. The credit reporting agency then makes deletions or changes to your credit file as appropriate based on the results of the reinvestigation. The name, address and, if reasonably available, the telephone number of the furnisher(s) of the information contacted while processing your dispute(s) is shown in the "Results of Your Investigation" section on the cover letter that accompanies the copy of your revised credit file.

If you still disagree with an item after it has been verified, you may send to us a brief statement, not to exceed one hundred words (two hundred words for Maine residents), explaining the nature of your dispute. Your statement will become part of your credit file and will be disclosed each time that your credit file is accessed.

If the reinvestigation results in a change to or deletion of the information you are concerned about, or you submit a statement in accordance with the preceding paragraph, you have the right to request that we send your revised credit file to any company that received your credit file in the past six months (twelve months for California, Colorado, Maryland, New Jersey and New York residents) for any purpose or in the past two years for employment purposes.

Exhibit XIII

Garabedian - Provost

10

1 credit bureaus. So it goes from a current payer  
2 to a 30-day payer account to a 60-day payer  
3 account to a 90-day payer account and at a 120  
4 days if any portion of the balance outstanding  
5 becomes a 120 days past due, it's reported as a  
6 derogatory account meaning that it's a delinquent  
7 account at that point.

8 Q. Now is there a file that American  
9 Express would have concerning Mr. Cosmas which  
10 they would have like a manila file about all the  
11 reports that have been filed pertaining to him?

12 A. I don't believe so.

13 Q. Could one be created from the  
14 computer?

15 A. I don't know.

16 Q. Okay. Do you know when the first time  
17 American Express reported to the credit bureaus  
18 that Mr. Cosmas was delinquent regarding this  
19 corporate account for roughly the amount of  
20 \$43,000?

21 A. Based on the aging of the account as I  
22 reviewed it, the account would have been reported  
23 derogatory in November of 2003.

24 Q. Okay. And are you aware that Mr.  
25 Cosmas had contacted American Express and said,

Exhibit XV

Garabedian - Provost

18

1 credit reporting?

2 Q. Right.

3 A. Based on what I have been able to ascertain  
4 the answer is, yes. The credit report was not  
5 deleted until the end of 2007 or January of 2008,  
6 something to that effect.

7 Q. Yeah. It was actually I think at some  
8 point it was probably more like March of 2008?

9 A. I think it was January of 2008.

10 Q. Okay; all right. Now what type of --  
11 like you said, you were involved with compliance.  
12 What does American Express do as a corporation to  
13 avoid situations like this so there are safe  
14 guards if somebody calls up and says it's not me,  
15 it shouldn't happen and they finally essentially  
16 prove their innocence which he did in 2006? What  
17 steps does American Express take, what procedure  
18 do you have to follow so that these things don't  
19 happen?

20 A. Well, the contacting American Express'  
21 front line, you know, telephone service center  
22 representatives would be -- it would be difficult  
23 for them to create any type of a file because the  
24 account is technically no longer with American  
25 Express, it's with one of the collection

Garabedian - Provost

15

1 in 2006; is that correct? That's when --

2 A. It's -- that's when the result was entered,  
3 yes.

4 Q. And what are the procedures -- in  
5 other words, Mr. Cosmas, prior to the litigation  
6 he contacted American Express and he says, hey,  
7 I'm not responsible for this and apparently  
8 nothing was done because from American Express'  
9 standpoint they kept reporting him as delinquent  
10 straight on up to the litigation; is that  
11 correct?

12 A. Yes.

13 Q. And then we had litigation in which  
14 the court said that Mr. Cosmas is not responsible  
15 from the paperwork you see in front of you; is  
16 that correct?

17 A. There was a judgment entered in favor of  
18 Mr. Cosmas, yes.

19 Q. And thereafter should American Express  
20 have notified the credit reporting agencies and  
21 said clean up his credit, he doesn't owe the  
22 \$43,000?

23 A. Should that have happened?

24 Q. Yes.

25 A. As a personal opinion, yes. As a matter of

Exhibit XVI

Provost & Colrick P.C.  
50 Thoreau Drive  
Freehold, NJ 07728  
732-462-6262  
Attorneys for Plaintiff

---

Nicholas Cosmas ,  
Plaintiffs,

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

DOCKET NO: 07-CV-6099 (FLW)

-V-

Civil Action

American Express Centurion Bank  
Defendant,

PLAINTIFFS RESPONSE TO  
DEFENDANTS MOTION  
FOR SUMMARY JUDGMENT

---

POINT ONE

Plaintiffs first cause of action should not be dismissed. Plaintiff is entitled to damages with respect to plaintiff's first cause of action. Defendant stopped falsely reporting plaintiff's account as delinquent for failure to pay the amount due on the business corporate account only after plaintiff brought this suit. Under the circumstances plaintiff is entitled to damages and attorney fees on the first cause of action.

POINT TWO

The second cause of action should not be dismissed for want of proximate cause. It is common knowledge and the Court can take judicial notice of the fact that the wrongful reporting of plaintiff as delinquent for a debt of \$49,000.00 has a negative impact on plaintiff's credit rating,

Defendant wrongfully persisted in reporting plaintiff delinquent on a debt that defendant knew was not plaintiff's. Negative credit information results in the consumer paying higher interest rates.

### POINT THREE

Plaintiff's cause of action for intentional tort should not be dismissed. In reckless disregard of the truth of this matter, defendant persisted in reporting plaintiff delinquent on a corporate debt for which defendant knew plaintiff had no liability. It was defendant that commenced the civil action that resulted in the judicial determination that plaintiff was not responsible individually for the debt of the corporation, Yet in reckless disregard of the judgment of the Court and the protestation's of the plaintiff, defendant continued to report plaintiff delinquent for non payment of a \$49,000.00 corporate debt.

### POINT FOUR

Plaintiff's third cause of action should not be dismissed for failure to establish that defendant's conduct was malicious and retaliatory. Defendant acted in reckless disregard of plaintiff's rights and the truth of the matter. Based on defendant's reckless disregard, plaintiff has a basis for alleging an intentional tort and defendant's acts may be characterized as malicious and retaliatory.

### POINT FIVE

Plaintiff's complaint should not be dismissed for failure to further detail more specifically violations committed by defendant. The Court Rules allow for notice pleading. Plaintiff's complaint sets forth cause of action for specific performance, negligence, intentional tort and violation of statutes that regulate the conduct of those involved in the credit reporting industry.

The factual allegation is that defendant knowingly reported plaintiff as delinquent for a debt that wasn't his. In this manner defendant violated the common law as well as provisions of the Fair Credit Reporting Act (FCRA) resulting in damages to plaintiff.



The Complaint complies with the Federal Rule of Civil Procedure 8(a)(2) in that it gives defendant fair notice of what the claim is and the grounds upon which it rests.

POINT SIX

The fourth cause of action should not be dismissed as the FCRA applies to furnishers of information as well as reporting agencies. The liability of furnishers of information pursuant to the FCRA is reviewed in Gordon v. Greenpoint Credit, 266F.Supp.2d 1007 (2003). The FCRA imposes liability on any person who willfully or negligently fails to comply with any of the Act's requirements with respect to any consumers. Although defendant American Express may not fit the FCRA's definition of consumer reporting agency, the company that American Express uses to collect the debt may be found to fit the definition of a reporting agency as set forth in point four of defendant's memoranda of law. The collection agent was in contact with American Express with respect to plaintiff's dispute of his liability for the corporate debt and his loss of points.

As a result American Express was given notice by its collection agent of the fact that Mr. Cosmas, the consumer, was disputing his account and the false reporting of the corporate debt as that of Mr. Cosmas. Had American Express investigated Mr. Cosmas' dispute, American Express may have corrected the false information and obviated the need for this lawsuit.

POINT SEVEN

Plaintiff's fourth cause of action should not be dismissed on the ground that the FCRA excludes American Express's false report from its definition of a "consumer report."

American Express was on notice by virtue of the judgment of the court exonerating Mr. Cosmas with respect to liability for corporate debt. They were further put on notice by Mr. Cosmas himself and by their collection agent.

Under the circumstances American Express had an obligation to investigate the disputed matter and to correct the false information.

#### POINT EIGHT

Plaintiff's fourth cause of action should not be dismissed as time barred.

The "wrong" inflicted upon plaintiff by defendant dates back to March of 2004. However the nature of the wrong is that of a continuing wrong. In spite of a court judgment, the protestations of the plaintiff and the report of the dispute from defendant's collection agent, the false information continued to be reported and wrongly confirmed until plaintiff brought this lawsuit.

#### POINT NINE

Plaintiff is entitled to punitive damages. Under the FCRA, 15 U.S.C. §§ 1681n(a)(2) provides for the award of punitive damages where the violation of the Act is willful. Here the defendant participated in obtaining a judgment exonerating the plaintiff from liability for \$49,000.00 of corporate debt. In conscious disregard of the judgment and over the protestations of the plaintiff, defendant willfully failed to investigate and correct the false information for several years and until plaintiff was required to bring this lawsuit.

Under the circumstances there is good cause to award punitive damages to plaintiff.

POINT TEN

Plaintiff is entitled to punitive damages under plaintiff's common law causes of action. Defendant sued plaintiff to hold him liable for the debt of a corporation. The Court ruled against defendant and entered judgment exonerating plaintiff from any liability for the \$49,000.00 debt. By not correcting the false information defendant acted in reckless disregard for plaintiff's rights and the consequences of their acts for several years. Under the circumstances punitive damages are warranted.